

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

Northern States Power Company,
Plaintiff,

v.

AEGIS Insurance Services, Inc. a/k/a
Associated Electric & Gas Insurance Services
Limited,
Defendant.

Case No. 09-2015-CV-02741

**COMPLAINT AND JURY
DEMAND**

[¶1] Plaintiff Northern States Power Company, for its Complaint against the above-named Defendant, alleges and states as follows:

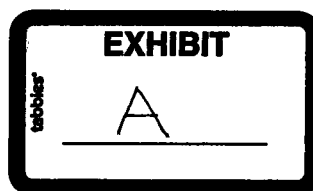
NATURE OF ACTION

[¶2] This is an insurance coverage action which arises out of the legal obligations of Northern States Power Company ("NSP") to investigate and remediate soil and groundwater contamination at and in the area of a former manufactured gas plant in Fargo, North Dakota.

[¶3] The real property which is the subject of the claims at issue in this action is located in and around the area of Northern Pacific Avenue between 10th and 12th Streets, Fargo, North Dakota (the "Site").

[¶4] AEGIS Insurance Services, Inc., a/k/a Associated Electric & Gas Service Limited ("AEGIS") is an insurance company that issued insurance policies to and/or for the benefit of NSP.

[¶5] AEGIS has done and/or does substantial business in North Dakota, including Cass County.



[¶6] In this action, NSP seeks damages for breach of contract and indemnification and defense from AEGIS under AEGIS Insurance Policies and declaratory relief because an actual controversy exists between NSP and AEGIS with respect to AEGIS' responsibilities under its insurance policies to pay claims for property damage as more fully described in this Complaint.

[¶7] The claims set forth herein arise in Cass County, North Dakota.

PARTIES

[¶8] Plaintiff NSP is a public utility authorized to do business in North Dakota. NSP serves over 92,000 electric and 52,000 natural gas customers in North Dakota with the assistance of more than 100 North Dakota employees working through three service centers located in North Dakota at 2302 Great Northern Drive, Fargo, 1206 5th Avenue South, Grand Forks, and 300 16th Street, Minot. NSP is regulated by the North Dakota Public Service Commission.

[¶9] Defendant, AEGIS, is a foreign corporation with its principal place of business located at 1 Meadowland Plaza, East Rutherford, New Jersey. AEGIS issued one or more insurance policies to or for the benefit of NSP, including without limitation the following, each of which was in effect for the following respective time periods ("AEGIS Insurance Policies"):

| Policy Number | Policy Period |
|----------------------|----------------------|
| 217A | 11/15/81-7/1/83 |
| 217NJ | 7/1/83-11/15/84 |
| 217ANJ | 11/15/84-11/15/85 |

ENVIRONMENTAL CLAIMS

[¶10] NSP seeks insurance coverage under the AEGIS Insurance Policies for property damage and damages paid and to be paid by NSP for environmental investigation and remediation of the Site.

[¶11] The City of Fargo ("City") has been undertaking a water main replacement and street improvement project in the vicinity of the historic manufactured gas plant ("MGP") at the

Site. In connection with the City's improvement plans and utility locates, on May 5, 2015, NSP located what appear to be former MGP pipes in the right-of-way at 1120 Northern Pacific Avenue. Odors and suspected tar were observed in the excavation area, which was completed approximately seven feet below grade.

[¶12] NSP has commenced environmental investigation and undertaken some removal activities at the Site.

[¶13] NSP neither owns nor controls the Site.

[¶14] NSP filed an Environmental Incident Report with the North Dakota Department of Health ("State") on May 7, 2015, and NSP has been engaged with the State, City and owners of private property at the Site concerning ongoing investigation and remediation of property damage at the Site.

[¶15] NSP has paid damages and will pay additional damages in the future in fulfillment of its legal obligations to investigate and remediate property damage and otherwise mitigate property damage at the Site.

[¶16] Any environmental damage at the Site has occurred continuously since the onset of the releases of coal tars, purifier box waste and other by-products from operations at the Site, and these events and continuous or repeated exposure to such conditions result in property damage and constitute an occurrence within the meaning of the AEGIS Insurance Policies.

[¶17] AEGIS, with respect to each of the AEGIS Insurance Policies, is obligated to indemnify and defend NSP for all sums which NSP has paid, may pay or may become legally obligated to pay in connection with the environmental investigation and remediation of the property damage at the Site.

[¶18] NSP has complied with the conditions of the AEGIS Insurance Policies and/or

such conditions have been satisfied, waived or are subject to an estoppel in connection with the Site.

[¶19] NSP's payments of sums in connection with the environmental investigation and remediation of damage at the Site have exceeded or are reasonably likely to exceed or exhaust any applicable self-insured retention of the AEGIS Insurance Policies so that coverage of the AEGIS Insurance Policies will attach.

FIRST CAUSE OF ACTION

(Declaratory Judgment)

[¶20] NSP incorporates as if fully set forth herein the allegations of paragraphs 2 through 19 above.

[¶21] AEGIS issued the AEGIS Insurance Policies to or for the benefit of NSP which provide coverage to NSP for the environmental investigation and remediation of property damage at the Site.

[¶22] NSP reasonably anticipates, based upon conduct of AEGIS demonstrating a definite and unequivocal manifestation of its intent to breach the AEGIS Insurance Policies, that AEGIS will breach its obligations to NSP under the AEGIS Insurance Policies with regard to NSP's liabilities at the Site.

[¶23] An actual controversy exists between NSP and AEGIS as to the nature and extent of coverage afforded by the AEGIS Insurance Policies for the claims described in this Complaint, which controversy is ripe for judicial determination. The declaratory relief requested would terminate the controversy between NSP and AEGIS giving rise to this action.

SECOND CAUSE OF ACTION

(Breach of Contract)

[¶24] NSP incorporates as if fully set forth herein the allegations of paragraphs 2 through 23 above.

[¶25] The past conduct of AEGIS constitutes an anticipatory breach of contract with regard to NSP's request for coverage under the AEGIS Insurance Policies in connection with NSP's liabilities at the Site. As a direct and proximate result of this AEGIS breach of contract, NSP has sustained and will sustain monetary damages in an amount to be determined at trial for which NSP is entitled to be compensated.

[¶26] WHEREFORE, NSP respectfully requests the following relief:

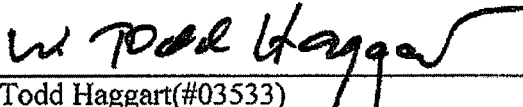
- a. An order declaring the rights and obligations of NSP and AEGIS under the AEGIS Insurance Policies with regard to liabilities arising from the Site;
- b. Judgment for reasonable damages, including consequential and incidental damages, in an amount to be determined at trial; and
- c. An award of costs, disbursements, interest and such other relief to which NSP is entitled at law or equity.

JURY DEMAND

[¶27] NSP hereby demands a trial by jury for all issues so triable.

Dated this 19th day of October, 2015.

VOGEL LAW FIRM


BY: W. Todd Haggart(#03533)
Steven F. Lamb(#04313)
218 NP Avenue
P.O. Box 1389
Fargo, ND 58107-1389
Telephone: 701.356.6359
Facsimile: 701.237.0847
Email: thaggart@vogellaw.com
Email: slamb@vogellaw.com

And (Pro Hac Vice Motions Pending)

MICHAEL BEST & FRIEDRICH LLP
Raymond R. Krueger, SBN 1000642
Lee M. Seese, SBN 1036636
100 East Wisconsin Avenue
Suite 3300
Milwaukee, WI 53202-1488
Telephone: 414.271.6560
Facsimile: 414.277.0656
Email: rrkrueger@michaelbest.com
Email: lmseese@michaelbest.com

**ATTORNEYS FOR PLAINTIFF NORTHERN
STATES POWER COMPANY**

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

Northern States Power Company,
Plaintiff,

Case No. 09-2015-CV-02741

v.

SUMMONS

AEGIS Insurance Services, Inc. a/k/a
Associated Electric & Gas Insurance Services
Limited,

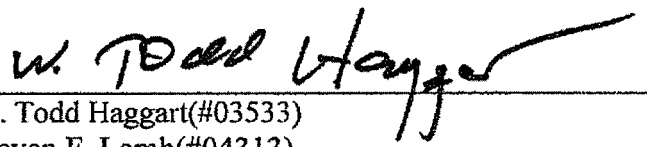
Defendant.

THE STATE OF NORTH DAKOTA TO THE ABOVE NAMED DEFENDANT:

[¶1] YOU ARE HEREBY SUMMONED and required to appear and defend against the Complaint in this action which is herewith served upon you, by serving upon the undersigned an answer or other proper response within twenty-one (21) days after the service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated this 19th day of October, 2015.

VOGEL LAW FIRM


BY: W. Todd Haggart(#03533)
Steven F. Lamb(#04313)
218 NP Avenue
P.O. Box 1389
Fargo, ND 58107-1389
Telephone: 701.356.6359
Facsimile: 701.237.0847
Email: thaggart@vogellaw.com
Email: slamb@vogellaw.com

And (Pro Hac Vice Motions Pending)

MICHAEL BEST & FRIEDRICH LLP

Raymond R. Krueger, SBN 1000642

Lee M. Seese, SBN 1036636

100 East Wisconsin Avenue

Suite 3300

Milwaukee, WI 53202-1488

Telephone: 414.271.6560

Facsimile: 414.277.0656

Email: rrkrueger@michaelbest.com

Email: lmseese@michaelbest.com

**ATTORNEYS FOR PLAINTIFF NORTHERN
STATES POWER COMPANY**

2368801.1

IN DISTRICT COURT

COUNTY OF CASS

STATE OF NORTH DAKOTA

Steven Francis Lamb
218 NP Ave PO Box 1389
Fargo ND 58102

Northern States Power Company vs. AEGIS Insurance Services, Inc., et al.

ORDER

On 10/20/2015 the above action was filed. Case number 09-2015-CV-02741 has been assigned. Indicate this case number on all documents.

The party receiving this notice shall immediately serve it upon any other party who has appeared whether by counsel or pro se and shall serve it upon each additional party within three days of that party's appearance. Proof of service must be filed with the Clerk. Failure to do so may result in appropriate sanction.

All parties have the responsibility for redacting personal information (such as social security numbers and credit, debit, or electronic fund transfer card numbers and any and all financial account numbers and the names of minor children) from all pleadings, stipulations, proposed orders and judgments, and other documents filed with the Court. When required, the first filing by any party which relates to any personal information shall include a Confidential Information Form pursuant to Rule 3.4 of the North Dakota Rules of Court.

ASSIGNMENT: Judge Wade L Webb

Frank Racek
Presiding Judge
East Central Judicial District

****Parties to civil actions are encouraged to participate in Alternate Dispute Resolution (ADR) at an early stage of the case. All counsel are required to follow the provisions of Rule 8.8.**